99TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
99-803

PROVIDING FOR THE CONSIDERATION OF H.R. 2482

NEWARK PUBLIC LIBRARY

AUGUST 15, 1986.—Referred to the House Calendar and ordered to be printed

SEP 17 1986
U. S. GOVT. PUBS.
DEPOSITORY

Mr. FROST, from the Committee on Rules, submitted the following

REPORT

[To accompany H. Res. 536]

The Committee on Rules, having had under consideration House Resolution 536, by nonrecord vote, report the same to the House with the recommendation that the resolution do pass.

The following is the amendment made in order under House Resolution 536.

AMENDMENT TO TITLE XI

At the end of title XI, insert a new section 1103 as follows:

SEC. 1103. FOOD PRODUCTION AND MARKETING UNIFORMITY.

The Federal Insecticide, Fungicide, and Rodenticide Act is amended by adding at the end thereof a new section as follows:

"SEC. 34. FOOD PRODUCTION AND MARKETING UNIFORMITY.

"(a) INTENT.—It is the intent of Congress to assure a safe and reasonably priced food supply for consumers. In order to achieve this goal, it is declared to be the express intent of Congress to require national uniformity in the regulation of the levels of residues of pesticides in or on food in order to permit national marketing of all food products without jurisdictional barriers.

"(b) NATIONAL UNIFORMITY.—(1) Except as provided in subsections (e) and (h), no State or political subdivision thereof may establish, continue in effect, or enforce any requirement or prohibition that—

"(A) directly or indirectly establishes a permissible level for a residue of a pesticide in or on food, if such a level has been established under a Federal law or a regulation or other enforcement requirement issued thereunder, and

71-008 O

Y1.1/8:

"(B) is not identical with the requirements or prohibitions of such Federal law and of the regulations and enforcement requirements issued thereunder,

if the use of the pesticide resulting in the residue is registered with the Administrator on the basis of data meeting the requirements of paragraph (2) of this subsection or if the use of the pesticide resulting in the residue has not been registered with the Administrator, or has been registered with the Administrator on the basis of data meeting the requirements of paragraph (2) of this subsection and later canceled or suspended, and the permissible level for the residue has been established or reaffirmed by the responsible Federal official on or after the date of enactment of this subsection.

"(2) For purposes of this subsection, a pesticide shall be deemed to be registered with the Administrator with respect to a use on the basis of data meeting the requirements of this paragraph if—

"(A) the initial registration or reregistration of the pesticide for that use was approved under section 3(c)(5) of this Act on or after April 25, 1985, or

"(B) the initial registration or reregistration of the pesticide for that use was approved under section 3(c)(5) of this Act prior to April 25, 1985, on the basis of data determined by the Administrator to meet the requirements of the provisions in 40 C.F.R. part 158 that became effective on April 25, 1985.

"(c) CONCURRENT JURISDICTION.—(1) Any State or political subdivision thereof may exercise concurrent jurisdiction over the levels of residues of pesticides in or on food for the purpose of enforcing requirements or prohibitions identical with those established in such Federal law and in the regulations and interpretations issued thereunder.

"(2) For purposes of paragraph (1), the Federal official responsible for the implementation of any Federal law referred to in subsection (b)(1) shall—

"(A) cooperate with and provide relevant information to State and local officials engaged in the regulation of the levels of residues of pesticides in or on food; and

"(B) provide training and enter into contracts with such officials to facilitate more effective uniform national regulation of the levels of residues of pesticides in or on food, except that the authority to enter into contracts under this paragraph shall be to such extent or in such amounts as are provided in appropriations acts.

"(d) PETITION.—(1) Any State may petition the Federal official responsible for the implementation of a Federal law referred to in subsection (b)(1) to adopt by regulation as a Federal requirement or prohibition an existing or proposed State requirement or prohibition relating to the levels of residues of pesticides in or on food.

"(2) Within 180 days after receipt of any such petition, such Federal official shall, after receiving comments from the scientific Advisory Panel established under section 25(d) containing an evaluation of relevant data and risk to human health—

"(A) respond specifying the substantive action that is being taken on such petition; and

READEX FICHE best copy available

"(B) if such action includes the adoption of a new Federal requirement or prohibition, initiate the appropriate administrative proceeding to implement such action.

"(3)(A) If such Federal official fails to respond or to initiate any appropriate action within the 180 days specified in paragraph (2) of this subsection, the State which submitted the petition may, notwithstanding the provisions of subsection (b), establish and enforce within its own jurisdiction the requirement or prohibition which was the subject of the petition, as an interim requirement or prohibition.

"(B) Such an interim requirement or prohibition may be contested by any person under the declaratory judgment provisions of section 2201 of title 28, United States Code, on the ground that the interim requirement or prohibition does not meet the standards established in paragraphs (1) and (2) of subsection (e). In any such action, the State shall bear the burden of proving that such interim requirement or prohibition meets such standards.

"(C) Such an interim requirement or prohibition may remain in effect until—

"(i) the Federal official takes action on the petition and initiates any appropriate administrative proceeding pursuant to paragraph (2) of this subsection and such action rejects the interim requirement or prohibition, or

"(ii) a court determines that the interim requirement or prohibition has not been shown by the State to meet the standards established in paragraphs (1) and (2) of subsection (e),

whichever occurs earlier.

"(e) EXEMPTIONS.—Upon petition of a State, the Federal official responsible for the implementation of a Federal law referred to in subsection (b)(1) may, by regulation promulgated after notice and opportunity for an oral hearing, exempt from subsection (b), under such conditions as may be prescribed in such regulation, a requirement or prohibition of such State relating to the levels of residues of pesticides in or on food in that State if such requirement—

"(1)(A) is justified by compelling local conditions or

"(B) is justified because the subject matter regulated by such requirement or prohibition is primarily local in nature and the Federal official responsible for the implementation of such Federal law is not exercising jurisdiction over the subject matter regulated by such requirement or prohibition, and

"(2)(A) protects an important public interest that would otherwise be unprotected,

"(B) would not cause any food to be in violation of any applicable requirement or prohibition under Federal law, and

"(C) would not unduly burden interstate commerce.

"(f) ADVISORY COMMITTEE.—For purposes of assuring effective and uniform implementation of all laws regulating the levels of residues of pesticides in or on food, the Federal officials responsible for implementation of such Federal laws shall establish an advisory committee comprised of eleven State and local officials engaged in the regulation of the levels of residues of pesticides in or on food.

"(g) RESPONSIBLE FEDERAL OFFICIAL.—A petition submitted under subsection (d) or (e) shall be acted upon by the highest Federal official responsible for the implementation of the Federal law in-

volved, which authority shall not be delegated. The advice of the advisory committee established under subsection (f) shall be obtained before action is taken upon any such petition unless the petition relates to an imminent hazard determination under subsection (h).

"(h) IMMINENT HAZARD.—(1) Notwithstanding the provisions of subsection (b), a State may establish and enforce within its own jurisdiction any requirement or prohibition which directly or indirectly establishes a permissible level for a residue of a pesticide in or on food if—

"(A) after an opportunity for written comment and a public hearing, it has been demonstrated that—

"(I) the permissible level for a residue of that pesticide in or on food established under a Federal law or a regulation or interpretation issued thereunder constitutes an imminent hazard to public health in that State because it presents a substantial risk of serious harm to human health, and

"(II) the additional protection provided by such requirement or prohibition is necessary to prevent such imminent hazard, and

"(B) within ten days after the state announces that it is promulgating the requirement or prohibition, the State has submitted a petition under subsection (d) or (e).

"(2) Any requirement or prohibition established or enforced under paragraph (1) may be contested by any person under the declaratory judgment provisions of section 2201 of title 28, United States Code, on the ground that such requirement or prohibition does not meet the standards established in subparagraphs (A) and (B) of paragraph (1). In any such action, the state shall bear the burden of proving that such requirement or prohibition meets such standards.

"(3) Any requirement or prohibition established or enforced under paragraph (1) may remain in effect until—

"(A) the Federal official takes action on the petition submitted under subsection (d) or (e) and such action rejects such requirement or prohibition, or

"(B) a court determines that the requirement or prohibition has not been shown by the State to meet the standards established in subparagraphs (A) and (B) of paragraph (1),

whichever occurs earlier.".

O